

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8940 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

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MANUBHAI MAGANBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR MUKESH R SHAH for Petitioner  
C.C. Bhalja, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/04/98

ORAL JUDGEMENT :

Rule. Shri Bhalja, learned AGP waives service of the notice.

2. This petition, purporting to be one under Article 226 of the Constitution, challenges the order dated 9.1.1997 (Annexure 'D' to the petition), passed by the Gujarat Revenue Tribunal dismissing Revision Application

No.TEN/ BS/ 44/ 92 for default in appearance of the applicant/ petitioner and his advocate.

3. Learned counsel for the petitioner has submitted that the learned advocate for the applicant appearing before the Tribunal could not remain present on the date of hearing on account of circumstances beyond his control and that the Tribunal ought not to have dismissed the matter for default as the petitioner had good grounds to argue on merits of the Revision Application.

4. At the time of issuance of notice this Court had directed the petitioner to deposit a sum of Rs.10,000/with the Mamlatdar & ALT (Ceiling), Choryasi, on or before 16.3.1998. The learned counsel for the petitioner has produced a copy of receipt dated 16.3.1998 issued by the Mamlatdar & ALT (Ceiling) in proof of deposit of the aforesaid amount of Rs.10,000/-.

5. Having heard the learned advocate for the petitioner and the learned AGP for the respondents it appears that it would be just and proper to set aside the impugned order dismissing the Revision Application for default of appearance and to direct the Tribunal to hear and decide the Revision Application by giving one more opportunity to the petitioner. However, in view of the fact that it was on account of absence of the applicant and his advocate that the order of dismissal for default was required to be passed, the applicant should be required to pay a sum of Rs.10,000/- to the respondents. Since that amount is already deposited by the petitioner with the Mamlatdar & ALT (Ceiling), Choryasi, the said amount shall be treated as costs to be borne by the petitioner to the respondents and the amount of Rs.10,000/- already deposited by the petitioner shall be adjusted against the aforesaid amount of costs. Respondent no.2 - Mamlatdar & ALT, Choryasi shall remit the said amount to the State of Gujarat in the Revenue Department and it shall be treated as costs paid by the petitioner to the respondents for these proceedings.

6. In view of the above discussion, the impugned order dated 9.1.1997, Annexure 'D' to the petition is set aside and the Tribunal is directed to hear and decide Revision Application No.TEN/ BS/ 44/ 92 after giving the parties an opportunity of being heard. Till the Revision Application is heard and decided by the Tribunal, status quo as to the land in question, as on today, shall be maintained. This protection is granted to the petitioner in view of the assurance given on behalf of the petitioner that the petitioner will cooperate for

expeditious hearing of the Revision Application.

7. Rule is made absolute to the aforesaid extent.

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